

## AGREEMENT FOR CORRECTIONAL TELEPHONE SERVICE

THIS AGREEMENT made this 15<sup>nd</sup> day of January, 2014 by and between Carbon County Sheriff's Office (hereafter "PARTICIPANT") and ENCARTELE, INC., a Nebraska corporation (hereafter "CONTRACTOR").

WHEREAS, PARTICIPANT desires to acquire correctional telephone service for its FACILITY(s) (the "FACILITY"); and

WHEREAS, CONTRACTOR is a qualified vendor of inmate telephone services; and

WHEREAS, PARTICIPANT desires to enter into an agreement with CONTRACTOR for correctional telephone services for the FACILITY.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises contained herein, it is mutually agreed as follows:

### 1. Definitions.

- a. Commission - The royalty payment paid to the PARTICIPANT for the right to provide inmate telephone service at the FACILITY.
- b. Collect Call - A telephone call whereby the called party accepts charges for the call and agrees to pay for them at a later time.
- c. Prepaid Call - A telephone call whereby the called party pays for the call prior to it being placed.
- d. Calling Card Call - A telephone call paid for by purchasing a calling card and utilizing a PIN number to validate the funds available for the call.
- e. Telephone Call - Any Collect, Prepaid or Calling Card Call terminated and billed from an inmate telephone.
- f. Gross Billed Revenue - Total revenue for a telephone call with no deductions for fees or bad debt.
- g. Inmate Telephone - A telephone instrument utilized by inmates to place collect, prepaid, and calling card calls from within the FACILITY.
- h. Inmate Telephone System - A computerized telecommunications switching system that processes and terminates collect, prepaid, and calling card calls.
- i. Facility - The physical location where the inmate telephone service is installed. This includes the current location(s) as well as any future location(s) that are constructed and/or moved in to during the term of this agreement.

### 2. Scope.

- a. PARTICIPANT hereby authorizes CONTRACTOR to provide telephone system, telephones, equipment and services for all correctional telephone services at the FACILITY and attest that there are no other inmate telephone service agreements in place. All of the telephone system, telephones and equipment provided by CONTRACTOR shall remain the property of CONTRACTOR. PARTICIPANT agrees to provide adequate space at the FACILITY accessible to inmates for the telephone system. During the term of the contract, CONTRACTOR shall be the exclusive provider of inmate telephone service for the FACILITY.
- b. If needed CONTRACTOR agrees to provide the telephone system at no cost to PARTICIPANT, and service the inmate phones and any newly installed or existing visitation phones and keep same in repair at its own expense during the term of this contract. CONTRACTOR shall be responsible for

line charges and any other costs associated with the telephone system. The telephone system shall incorporate security features including but not limited to the following: (i) capability of recording and monitoring all calls, except those calls between the inmate and his/her legal counsel; (ii) ability for calls to be reviewed by staff for possible extortion violations, gang activity, etc; (iii) ability to block all calls to victims and staff; and (iv) ability to administer the phone system from any computer with an internet connection.

3. Commissions.

- a. PARTICIPANT shall receive as a commission 50% (forty percent) of the gross revenue in commissions paid to the County.
- b. Should PARTICIPANT elect to purchase and sell prepaid calling cards, PARTICIPANT will order said calling cards from CONTRACTOR and be invoiced by CONTRACTOR for 50% ( fifty percent) of the full face amount of the calling cards. PARTICIPANT will then submit payment for the calling cards to CONTRACTOR on net 20 (twenty) day terms. Should PARTICIPANT fail to make payment on the calling cards that PARTICIPANT ordered within the terms specified, CONTRACTOR has the right to deduct any unpaid calling card invoice amounts from future commissions. CONTRACTOR agrees that no sales tax will be charged on calling card orders provided that PARTICIPANT supplies its tax exemption certificate to CONTRACTOR.

The first commission payment due to PARTICIPANT shall be remitted sixty (60) days following the end of the month in which the installation occurred, and subsequent commission payments due to PARTICIPANT shall be remitted monthly.

- c. CONTRACTOR shall provide PARTICIPANT, one thousand dollars (\$1000) in calling cards to begin the extension of the service and one thousand dollars (\$1000) on each subsequent anniversary date, five thousand (\$5000) total over the life of the contract. The bonus cards are to be utilized at the PARTICIPANT discretion.
- d. CONTRACTOR shall provide PARTICIPANT with access to its reporting website whereby PARTICIPANT can produce the following reports:
  - i. Call Detail reports
  - ii. Commission reports
- c. PARTICIPANT shall review the monthly report and report any discrepancies to CONTRACTOR for immediate rectification.

4. Contract Term and Termination.

- a. **Term** - The contract term shall be five (5) years, commencing on, Feb 1, 2014 and terminating 60 (sixty) months from the commencing date. CONTRACTOR agrees to extend to PARTICIPANT the option of extending the term of this contract for one (1) additional five (5) year period. This renewal or extension shall be upon the same terms and conditions as the original contract, unless otherwise changed and agreed upon by both parties, and shall be automatically renewed at the end of the original term. If PARTICIPANT intends not to exercise its option, it shall specifically notify CONTRACTOR in writing at least ninety (90) days prior to expiration of this contract.
- b. **Termination** - The contract may be terminated by either party, for cause. In such case, the party requesting termination has to define in writing the reason for said termination and has to allow the other party the opportunity to cure the said reason within 30 days. If the said reason is not cured within the 30-day timeframe, the party requesting termination may terminate the contract.

5. No Third Party Beneficiaries. The parties do not enter into this contract for the benefit of any person other than the parties to this contract, nor do they intend that any person be or become a third party beneficiary to this contract.



6. **Assignment and Subcontracting.** This contract and the covenants and agreements contained herein shall be binding upon and inure to the benefit of successors and assigns of the parties hereto and may not be assigned by either party hereto without the prior written consent of the other party. Any attempt to assign this contract in violation of this Paragraph is void and of no effect.
7. **Notices.** All notice or other communications required or permitted to be given under this contract shall be in writing and shall be deemed to have been duly given if delivered personally by hand, via overnight courier, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the appropriate party at the following address or such other address as may be given in writing to the parties:

**PARTICIPANT:**

Carbon County Sheriff's Office  
1302 East Daley  
Rawlins, WY 82301  
Attn: Sheriff Jerry Colson

**CONTRACTOR:**

Encartele, Inc.  
8210 South 109<sup>th</sup> Street  
LaVista, NE 68154  
Attn: Scott Moreland

8. **Sole and Exclusive Agreement; Modification.** This contract represents the sole and exclusive agreement between the parties hereto, and this contract shall not be changed, modified or amended except by a written agreement executed by the parties.
9. **Non-assumption of Liability.** Neither party assumes or accepts any liability for the acts or failures to act of the other party, its agents or employees. Further, notwithstanding anything herein to the contrary, neither party shall be liable to the other for incidental, indirect, special, consequential or similar damages or for lost profits even if advised in advance of the possibility of such. If CONTRACTOR is unable to perform hereunder as a result of events beyond its reasonable control, then CONTRACTOR shall be relieved of its obligations so affected only for as long as such circumstances prevail.
10. **Indemnification by CONTRACTOR.** CONTRACTOR will indemnify and shall keep, save and hold harmless PARTICIPANT from and against loss and any all claims, demands, causes of action, damages, costs or liability arising from or out of any breach of this contract by CONTRACTOR.
11. **Resolution of Problems and Disputes.** If either party believes the other party has violated the terms of this contract, the party having such belief shall notify the other party, in writing, of the alleged violation. The parties shall then meet and confer on the issue within five (5) day(s) of receipt of the written notice.
12. **Non-waiver of Breaches.** The waiver of any breach of this contract by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.
13. **Confidentiality.** The parties agree to keep the terms of this contract confidential except to the extent disclosure is required by applicable law or as otherwise mutually agreed to in writing.
14. **Governing Law and Venue.** This contract shall be governed by the laws of the State of Nebraska (without regard to the choice of law provisions thereof) and the parties agree that venue for any legal proceedings or otherwise shall exclusively be in the state and federal courts located in Franklin County, Nebraska
15. **Unenforceability of Portion of Contract and Separation of Other Provisions of Contract.** If any provisions contained in this contract are held to be unenforceable by a court of law or equity, this contract shall be construed as if such provision did not exist, and the enforceability of such provisions shall not be held to render any other provision or provisions of this contract unenforceable.
16. **Effect of Headings.** Section and paragraph headings used herein are provided solely for purposes of convenience, and are not intended to limit or define the meaning of the text to which they apply, or to be used in construing or interpreting this contract.

17. **Counterparts.** This contract may be executed in one or more counterparts, each of which is to be deemed an original, and all of which constitute, collectively, one agreement.

IN WITNESS WHEREOF, this contract has been executed by each of the parties by their duly authorized legal representatives.

Carbon County Sheriff's Office

ENCARTELE, INC.

Signature: \_\_\_\_\_

*Jerry R. Colson*

Signature: \_\_\_\_\_

*Scott Moreland*

Printed Name: \_\_\_\_\_

*Jerry R. Colson*

Printed Name: \_\_\_\_\_

*Scott Moreland*

Title: \_\_\_\_\_

*Sheriff*

Title: \_\_\_\_\_

*President*

Date: \_\_\_\_\_

*01-15-14*

Date: \_\_\_\_\_

*1-21-2014*

